WP(C) 2930/2005
BEFORE

HON'BLE MR. JUSTICE AMITAVA ROY.

JUDGMENT AND ORDER(Oral)

Being aggrieved by the order dated 29.7.2004 passed by the Director of Secondary Education, Assam permitting the respondent no. 4 to hold the charge of the office of the Head Master of Karatipar High School, Majuli (hereinafter referred to as the school) w.e.f. 01.08.04 the petitioner has sought to invoke the writ jurisdiction of this court.

2. I have heard Mr. B.P. Bora Senior Advocate assisted by Mr. D. Bora Advocate for the petitioner and M/S M. Gogoi, learned standing counsel, Education Department for the official respondents. The respondent no. 4 though served with the notice of the proceeding has not entered appearance.

3. A brief out line of the pleaded case of the petitioner would be essential to appropriately evaluate the rival submissions. The petitioner who is a graduate in science was appointed as science graduate Assistant teacher in the school by order dated 6.6.1992 of the Inspector of Schools, Jorhat District Circle (herein after referred to as the Inspector of Schools).While serving as such the petitioner obtained BED degree in the year 1999 from the Post Graduate Training College, Jorhat.
One Sri Horendra Nath Baruah, B.Sc. Assistant Teacher of Lohit High school Majuli was on his request transferred to and posted at the Karatipar High school on 27.01.1996. According to the petitioner as he had come on transfer on his request his seniority was to be reckoned in the school from the date of joining there. The petitioner has claimed that he had been drawing pay in the graduate scale w.e.f. 01.08.1992. Out of five graduate Assistant teachers in the school including him. Sri Horendra Nath Baruah received pay in the graduate scale w.e.f. 13.11.1991. The remaining three started drawing pay in the graduate scale after him. The petitioner has sought to substantiate the above facts by producing an extract of the seniority list Annexure D to the writ petition. The Inspector of Schools by his order dated. 20.11.92 upgraded the service of respondent no. 4 to the graduate scale of pay.

4. At or about the same time by, notification dated 01.07.2003 by order of the Government of Assam, it was provided that the seniority of Assistant Teachers with graduate degree serving in the intermediate scale of pay in the provincialised High Schools/Higher Secondary Schools would be counted from the date of their joining as Assistant Teachers. Subsequent there to in exercise of powers under Article 309 of the Constitution of India ,the Assam Secondary Education (Provincialised) Service Rules 2003(thereafter as Rules) were framed for regulating the recruitment and conditions of service of persons appointed to the Assam Secondary Education (Provincilised) Service. In terms of Rules 14(2), the seniority of teachers to be considered for promotion to the post of Head Master/Head Mistress and Superintendent of Higher Secondary Schools etc. was to be determined from the date of receipt of graduate scale as contemplated in Rule 24(2). The conditions of eligibility of teachers were also prescribed in Rule 14(4) for such promotion. While the matter rested at that, by the impugned order the respondent No. 4 was allowed to take charge of the office of the Headmaster of the school. The sworn statements as above have remained unrefuted in absence of any written response from the respondents.

5. Mr. Bora has emphatically urged that in terms of the Rules, the petitioner is the most suitable candidate to be allowed to hold the charge of the office of Head Master of the School and the impugned order permitting the respondent N

o. 4 who is academically deficient and junior to him is patently illegal. Elaborating the above, the learned Senior counsel has argued that the respondent No. 4 does not possess the BED or BT degree and thus he is not qualified in terms of the Rules to be considered for promotion to the post of Headmaster of the School. In that view of the matter he could not have been permitted to hold the charge of the office as well. Drawing the attention of the court to Rule 14(2) and Rule 24(2) of the Rules Mr. Bora has contended that the petitioner as the senior most graduate Assistant teacher ought to have been preferred to hold the charge of the aforementioned office. The impugned action being in blatant violation of the Rules, the same is not est in law and is liable to be adjudged as such. There being no justifiable reason to make the appointment as embodied in the impugned order, the respondent authorities ought to be directed to allow the petitioner to hold the charge of the office of the Head Master of the School, be urged.

6. The learned standing counsel has submitted that seniority in service not being of definitive significance for the selection of a candidate to hold the charge of the office of the Head Master of High Schools/Higher Secondary Schools in the State, the impugned order cannot be faulted with. As in the matter of such selection as well the performance of the candidate concerned as reflected in his Annual confidential Report is of utmost relevance, the contentions raised by the petitioner are untenable.

7. The facts pertaining to the appointment of the petitioner and the respondent No. 4 and the difference in dates of drawal of pay in the graduate scale are not in dispute. The extract of the seniority list produced as Annexure D projects the five graduate Assistant Teachers in the school in the following order.

(I) Horendra Nath Baruah.
(II) Basaram Doley.
(III) Probin Mohanta.
(IV) Jaganath Pegu.(petitioner)
(V) Prodip Bora.

8. As noticed herein above Shri Horendra Nath Baruah had been transferred to the school on 27.1.96 on his own request as is evident from the said order (Annexure.C).In that view of the matter in terms of Rule 24(2) his seniority in the school would be counted from the date of his joining there. He therefore, cannot claim seniority over the petitioner. Sri Probin Mohanta and Prodip Bora have been drawing pay in the graduate scale w.e.f.30.12.1993. Thus as per Rule 14(1) and 24(2) of the Rules they are junior to the petitioner. By the same analogy respondent No. 4 cannot claim seniority above the petitioner, as he had been sanctioned graduate scale of pay w.e.f. 01.11.92. The guidelines for computation of seniority as Assistant teacher with graduate degree serving in intermediate scale in provincialised High/Higher Secondary Schools as outlined in the notification dated 01.03.2003 referred herein above, in the face of the Rules is apparently ineffectual. The respondent No. 4 therefore cannot derive any benefit there from. Though not spelt out in so many words it has been the categorical and consistent stand of the petitioner that the respondent No. 4 is not academically qualified to be considered for promotion for the post of Head Master in terms of Rule 14. The following norms of eligibility have been stipulated under Rule 14(4) to be mandatorily satisfied by a candidate to be considered for such promotion.

4) Eligibility for the post of Head Master/Head Mistress Superintendent/Assistant Head Master/Asstt. Head Mistress/Assistant Superintendent of High/High Madrasa School as the case may be:

(i) The minimum qualification for the post of Headmaster/Headmistress/Superintendent/Asst.Headmaster/Assistant head Mistress/Assistant Superintendent shall be graduate in Arts, Science or Commerce with B.T. or B.Ed. degree.
(ii) He/she must possess at least 10 years of teaching experience as Graduate Teacher.
(iii) He/She must possess at least seven years of teaching experience as Graduate teacher to be an Assistant Head Master/Head Mistress/Assistant Superintenden

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9. The petitioner has maintained that he had obtained BED degree in the yea r 1999. He is also a graduate in Science. On the date of the impugned order, he had acquired ten years teaching experience as a graduate teacher. Therefore on t he touchstone of the Rules the petitioner was eligible to be considered for prom otion for the post of Head Master of the School on regular basis. Needless to sa y, from that point of view he was unmistakably eligible to be considered to be p ermitted to hold the charge of the said office.

10. It is apparent that the petitioner is senior to the respondent no. 4 as graduate Assistant teacher and eligible in terms of the Rules for being promoted to the Head Master. In absence of any material on record to justify the impugne d order, I am not inclined to sustain the submission made on behalf of the offic ial respondent. Noticeably the official records pertaining to a decision precedi ng the issuance of the impugned order also have not been produced in support the reof. It is too fundamental to state that a candidate eligible in terms of the r elevant Rules for promotion to a post on a regular basis cannot be overlooked fo r the purpose of any temporary arrangement concerning the post as in the instant case. In absence of any affidavit controverting the correctness or authenticity of the, statements made in the petition, it is permissible to proceed on the ba sis that the pleaded case of the petitioner is correct.

11. In the above view of the matter the petition is allowed. The impugned or der being repugnant to the Rules is set aside. The state respondents would take appropriate steps to consider the petitioner’s case for the charge of the office of the Head Master of the School by meticulously taking note on his service car rier and the prescription of the Rules noticed herein above and pass appropriate order.

12. It is made clear that the direction ought not to be construed to come in the way of a process already initiated, or contemplated to fill up the said pos t on a regular basis in terms of the Rules. The process for the in-charge appoin tment indicated herein above should be completed within a period of four weeks f rom the receipt of the certified copy of this order. No costs.